

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-222294 **DATE:** April 16, 1986
MATTER OF: Simco, Inc.

DIGEST:

1. Acknowledgment of a later amendment to a solicitation does not constitute acknowledgment of prior amendments. A bidder's failure to acknowledge each material amendment generally renders the bid nonresponsive.
2. The risk of nonreceipt of a solicitation amendment generally rests with the bidder. The fact that the bidder does not receive an amendment at all or receives it in what the bidder considers insufficient time to respond does not change the fact that failure to timely acknowledge a material amendment generally renders the bid nonresponsive.

Simco, Inc. protests the award of a contract under invitation for bids (IFB) No. NOO104-85-B-0971, issued August 7, 1985, by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania. Simco contends that the Navy improperly rejected its bid as nonresponsive for failure to acknowledge one amendment and for late acknowledgment of a second amendment to the solicitation.

We dismiss the protest.

Background

The Navy issued two amendments to the solicitation. Simco states that it never received amendment No. 0001 and that it received amendment No. 0002 on September 20, 3 days after the original bid opening date. Amendment No. 0002 extended bid opening from September 17 to September 27 and included certain items which had been omitted from amendment No. 0001. Simco states that it assumed that the second amendment incorporated all of the first and, therefore, that its acknowledgment of amendment No. 0002,

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submitted on September 26, was all that was necessary for its bid to be responsive. On October 2, the Navy asked Simco to confirm its price, and it subsequently requested Simco to extend its acceptance period through March 1, 1986. On March 7, however, the Navy notified Simco that its bid was nonresponsive.

A bidder's failure to acknowledge a material amendment to an IFB generally renders the bid nonresponsive. Project Engineering, Inc., B-222005, Feb. 25, 1986, 86-1 CPD ¶ 196. In addition, the acknowledgment of a later amendment does not constitute acknowledgment of prior amendments. M.C. Hodom Construction Co., Inc., B-209241, Apr. 22, 1983, 83-1 CPD ¶ 440. Moreover, it is well established that the risk of nonreceipt of a solicitation amendment generally rests with the bidder for a given contract. Marino Construction Co., Inc., 61 Comp. Gen. 269 (1982), 82-1 CPD ¶ 167; Reliable Service Technology, B-217152, Feb. 25, 1985, 85-1 CPD 234. The fact that a bidder such as Simco may not have received an amendment is irrelevant absent evidence that the failure to receive the amendment resulted from a deliberate attempt by the contracting agency to exclude the firm from competition. See Project Engineering, Inc., supra.

Amendment No. 0001

With respect to amendment No. 0001, Simco does not deny that the amendment was material, so that its failure to acknowledge it might be waived. Nor does it allege deliberate exclusion. Although Simco was on notice of the existence of this amendment when it received amendment No. 0002, Simco did not acknowledge the prior amendment. We cannot conclude that Simco was bound to comply with amendment No. 0001 in its entirety merely because it acknowledged receipt of amendment No. 0002. M.C. Hodom Construction Co., Inc., supra; cf. Kinross Mfg. Corp., B-219937, Dec. 26, 1985, 65 Comp. Gen. ____, 85-2 CPD ¶ 716 (partial acknowledgment that does not clearly indicate that a bidder is aware of an entire amendment is not acceptable). We find, therefore, that the Navy was correct in determining that Simco's failure to acknowledge amendment No. 0001 rendered its bid nonresponsive.

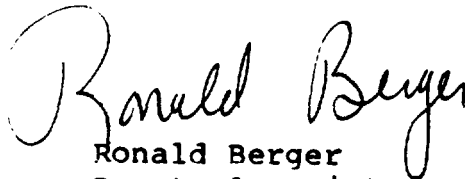
Amendment No. 0002

Simco did not submit its acknowledgment of the second amendment until 1 day before the amended bid opening date, and apparently the Navy did not receive it by bid opening.

Simco's assertion that it did not receive amendment No. 0002 in sufficient time to permit an earlier response is not persuasive. Simco's own submission shows that Simco received the second amendment 7 days before the actual bid opening date, and we see no reason why it could not have inquired as to the contents of the prior amendment and acknowledged both amendments by overnight mail, commercial carrier, or telegram (if permitted). Instead, Simco apparently waited until 1 day before bid opening and then submitted its acknowledgment of amendment No. 0002 by some unidentified means.

Under these circumstances, we find that the Navy also was justified in considering Simco's bid nonresponsive because the second acknowledgment was received late.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel